

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11792 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

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1 Whether Reporters of Local Papers may be
allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair
copy of the judgment ?

4 Whether this case involves a substantial
question of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge ?

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UNION OF INDIA & 1 - Petitioner(s)

Versus

**PACIFIC BASIN SHIPPING & TRADING CO LTD & 1 -
Respondent(s)**

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Appearance :

MR SS PANESAR for Petitioner(s) : 1 - 2.

SINGHI & CO for Respondent(s) : 1,

RULE SERVED BY DS for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 18/08/2006

ORAL JUDGMENT

1 This petition, though styled as petition under Articles 226 and 227 of the Constitution of India, is in effect a petition under Article 227 of the Constitution. The petitioner challenges the legality and validity of the order dated 29.9.2000 made below application exhibit 84 by the Court of learned Civil Judge (S.D), Morbi in Special Civil Suit No.72 of 1992.

2 The undisputed facts are that by virtue of charter party agreement dated 19.8.1998 entered into between respondent No.1 and the petitioner, respondent No.1 was required to carry 25000 MT Bulk wheat from port of U.S.A. to safe port of India. The said charter party agreement also provided for an arbitration clause. It is not necessary to refer to other clauses of the agreement as admittedly the matter is pending as of today before the sole Arbitrator. The matter was referred to the Arbitrator in light of the dispute which arose between the parties regarding claim of U.S. Dollars 3,13,501.38.

3 It is also an admitted fact that respondent No. 1 herein filed Civil Suit No. 3641 of 1992 on 10.1.1992 in the original jurisdiction of Bombay High Court and the said suit is yet pending. On 26.12.1992 the petitioner herein filed Special Civil Suit No.72 of 1992. Thereafter on 5.1.2000 the petitioner herein moved an application under section 10 of the Code of Civil Procedure seeking stay of the proceedings of Special Civil Suit No. 72 of 1992 on the

ground that the matter in issue is directly and substantially in issue in the previously instituted suit viz., Special Civil Suit No. 3641 of 1992 between the same parties hence in order to avoid possible conflict in findings. Vide impugned order dated 29.9.2000 this application exhibit 84 came to be rejected.

4 The learned Advocate for the petitioner has assailed the impugned order dated 29.9.2000 on the ground that the subject matter of both the suits is same and there is likelihood of recording of conflicting findings. According to him in both the suits the principal dispute centers round the interpretation of the charter party agreement and hence, in the interest of justice, the suit filed by the petitioner was required to be stayed and not be proceeded further.

5 The Trial Court has held that for the purpose of application of section 10 of the Code of Civil Procedure the following three conditions should be satisfied :

“(I) The matter in issue should be directly and substantially the same in previously instituted suit.

(II) The previously instituted suit should be pending in the same Court in which the subsequent suit is brought in any Court or in any other Court in India having jurisdiction to grant relief.

(III) The parties of both the suits should be the same or between the parties under whom they or any of them claim litigating under the same title, or representative.”

6 In relation to the first condition it is found that the matter in issue is not directly and substantially the same in the previously instituted suit and the reasons for the findings have been recorded in paragraph No.4(I) of the impugned judgment.

6.1 In so far as condition No. 2 is concerned the Trial Court has recorded that the same is not satisfied because the reliefs in both the suits are different in the background of different cause of action and the petitioner-plaintiff has not accepted jurisdiction of the Bombay High Court to try the suit.

6.2 In relation to condition No. 3 it is further found that respondent No.2 herein (petitioner No.2-defendant) in Special Civil Suit No. 72 of 1992 is not a party either as a plaintiff or as a defendant in the previously instituted suit pending before the High Court of Bombay.

7 In the aforesaid fact situation it is not possible to hold that the Trial Court has committed any jurisdictional error so as to permit this Court to intervene. Nor is it possible to state that the impugned order suffers from vice of perversity enabling this Court to exercise powers under Article 227 of the Constitution. There is one more added reason. It is an accepted fact that reference has been made to the Arbitrator and the arbitration proceedings have commenced. Hence, it will be open to the petitioner to raise all the issues factual as well as legal, before the Arbitrator, including the challenge as to jurisdiction of the Arbitrator.

8 In the aforesaid circumstances, in absence of any infirmity in the impugned order of the Trial Court the petition does not merit acceptance and is accordingly rejected. Rule discharged. There shall be no order as to costs.

9 At this stage, the learned Advocate for the petitioner seeks stay of the operation of this judgment for a period of eight weeks. In light of the facts which have come on record the request is rejected.

Sd/-
(D.A.Mehta, J.)

m.m.bhatt